

Institute for Restorative Justice & Restorative Dialogue
School of Social Work
The University of Texas at Austin

IMPLEMENTING DEFENSE-INITIATED
VICTIM OUTREACH IN TEXAS

Marilyn Armour, Ph.D.
Program Director
1925 San Jacinto Blvd.
Austin, TX 78710
marmour@mail.utexas.edu

Stephanie Frogge, MTS
Program Coordinator
1925 San Jacinto Blvd.
Austin, TX 78710
frogge@mail.utexas.edu

General mailbox: divo@austin.utexas.edu

Defense-Initiated Victim Outreach (DIVO) is a federal and state program that seeks to address the judicial needs of victim survivors throughout the justice process by providing a link between the survivors and the defense, especially in capital cases. A significant departure from traditional criminal justice-based victim services, DIVO serves as a mechanism by which survivor families, if they choose, may have access to the defense team and the defense team in return can give consideration to requests from them.

DIVO utilizes specially trained Victim Outreach Specialists (VOS) who operate independently of the defense but who, at the request of the defense, look to bridge the historic gap between the defense and victim survivors. The VOS works with the survivor family to identify judicial questions, concerns and needs that can be uniquely addressed by the defense and communicates those issues to the defense. Through the VOS the defense has an opportunity to respond without compromising the due process rights of their client.

The purpose of this program is to reduce the harm the criminal justice proceedings may be inadvertently and unnecessarily inflicting on survivor families. Access to the defense team may help address survivor needs for information, empowerment and control – needs often not met by the criminal justice process. In addition it can serve as a means for the defense to relate to survivors with respect and compassion, which may, in turn, result in more options for their client. It may also reduce tension levels between the survivor family and defense counsel. The program is completely voluntary for both defense counsel to initiate and for victim survivors to participate. To insure a principled, victim-driven process, all communication flows from the survivor family to the defense except when the defense is responding to specific questions and requests.

In Texas the DIVO program is part of the Institute for Restorative Justice and Restorative Dialogue, which is located in the School of Social Work at The University of Texas at Austin. The School of Social Work was selected as the site for DIVO because of its non-aligned status – neither pro defense nor pro prosecution.

DIVO grew out of the efforts of defense attorneys in 1998 to respond to the needs of victims and survivors of the bombing of the Oklahoma City federal building during the trial of Timothy McVeigh. Subsequent to his trial, defense attorney Richard Burr, Dr. Howard Zehr of the Center for Justice and Peacebuilding at Eastern Mennonite University, and Tammy Krause, a graduate of the program, developed the DIVO process. DIVO is used at the federal level and is gaining momentum at the state level through the efforts of the Georgia Council for Restorative Justice at Georgia State University, School of Social Work. Because the Georgia model is readily transferable, it is being implemented in Texas through a grant from the Department of Justice, Office of Justice Programs.

The need for DIVO is great in Texas where many capital cases originate each year. Statewide there are nearly 400 inmates on death row, over 300 death penalty eligible prosecutions each year, and approximately 15 new death sentences handed down annually. Texas leads the country in number of prisons in operation (137) and its willingness to spend over \$5 billion on its prison system every two years (TDCJ, 2006). Victim survivors' needs are easily eclipsed in a system that is so deeply offender focused. In spite of legislated crime victim rights there is a substantial body of research on the harmful impact that murder trials can have on victim survivors.

DIVO recognizes and supports a defendant's constitutional right to effective assistance of counsel who will be a zealous advocate. One of the unfortunate consequences of the adversarial system, however, has been the stereotyping and dehumanizing that often occurs of one side by the other so that victim survivors are not recognized other than how they may be useful to the defense or how they serve as an obstacle to zealous advocacy. Whatever needs the victim survivors have may never get known or addressed. The mission of DIVO is to reduce unnecessary harshness and tension in the current criminal justice system between victim families and defense attorneys.

In no way intending to diminish or circumvent any legal privilege accorded a person charged with a crime, survivor family's needs specific to the defense may include having representatives of the offender hear their story and acknowledge the loss they have suffered or listen patiently and compassionately to the anger victim survivors feel toward the defendant. They may want information about how and why a crime happened and specifics about their loved one in the last moments of their life. They may want to know why the defendant pled not guilty after giving a 20-page confession. They may want information about timing and location of legal processes. Even without specific requests from survivor families, greater sensitivity to their needs may be available from the defense in the form of stipulating to a photograph of a keepsake so the family can have the keepsake back or referring to the victim by name in court proceedings. It may also be helpful to survivor families to be asked whether the scheduling of pretrial hearings or the trial itself will be a hardship because survivors may have to arrange in advance to travel long distances, miss work or other commitments. If it doesn't otherwise hurt their case, the defense team's acting with civility toward the survivor family can provide them with some dignity, create a less hostile environment, and lessen to some extent, aspects of the adversarial judicial process that tend to re-traumatize them. A more civil environment can be beneficial to their client and can also serve as a principled way for defense counsel to acknowledge the harm done to the victim survivors.

At such time as the defense counsel determines that the use of DIVO services may be helpful in a case, the defense requests DIVO participation. The contact with the survivor family is then made by a VOS, trained by DIVO to act as the intermediary. All encounters between the survivor family and the VOS focus singularly on the judicial needs of the survivors without any other agenda or hidden purpose. For the process to work, the VOS is required to have extensive training trauma reaction, restorative justice principles, ethics and a working knowledge of the adversarial model. Additionally training includes how to reach out to survivor families in a way that does not produce further harm. The VOS never assists in developing defense strategy, participates in confidential meetings, or has access to privileged information.

Principles of DIVO practice include the following:

- Victim survivors should be provided requested information about the crime, the case and the legal process in non technical language, to the extent the due process rights of the defendants are not compromised.
- Victim survivors should be assisted in identifying, and, to the extent possible, obtaining what they need through the judicial process.

- Victim survivors should be provided as many options as possible for their involvement in the criminal justice process.
- Precautions should be taken, to avoid or reduce additional trauma to victim survivors through testimony, cross examination or other parts of the process, unless deemed necessary in advocating the defendant's case.
- If they wish, victim survivors may be provided contact, directly or indirectly, with defense attorneys in order to address the above principles.
- The extent of confidentiality of the information provided by the survivors to the VOS must be maintained by the VOS, consistent with the victim survivors' wishes.
- VOS will conduct themselves in a way that develops, respects, and maintains the trust of the defense team and not do anything to undermine their efforts on behalf of the defendant.
- Because their primary focus is on the victim survivors and their needs, a VOS is not a member of the defense team, is not involved with any other aspect of the case (such as mitigation and consulting with the team) and, unless so requested by the victim survivor, does not have contact with or direct knowledge of the defendant or his/her family.
- Whether to utilize the services of DIVO is in the sole discretion of the defense counsel. Once DIVO is employed by the defense counsel, involvement on the part of the victim survivor(s) is totally voluntary. Once DIVO has been employed by a defense counsel, DIVO services should not be denied to a victim survivor(s) based on their stand on the death penalty. Once a relationship with the defense team is established, the VOS should remain available to the victim survivor(s) throughout the legal proceedings and for a reasonable time beyond.
- To guard against misuse and unintended consequences, DIVO practice will be regularly evaluated and victim survivors, victim advocates, and allied professionals are part of the evaluation process.
- DIVO programs and practitioners trained on the Georgia model are committed to operating within these principles and guidelines.

DIVO offers an ethical, principled bridge between the survivor family and the defense counsel in capital cases that can be used at different stages in the criminal justice process: during the trial, appellate and post-conviction proceedings, or whenever it may be initiated by the defense team. It also offers a more active and empowering role for victim survivors in death penalty cases without compromising the due process rights of capital defendants. It increases options – and control over those options for victim survivors and opens up the possibility that the defense team's expressions of civility and sympathy to the survivors throughout the process, may, paradoxically, be reciprocated.